

Exhibit 127

Subject: Re: Redwood City MND and MMRP - Response

Date: Friday, June 23, 2017 at 9:12:17 AM Pacific Daylight Time

From: Gail Raabe

To: Zeppetello, Marc@BCDC

CC: Brian Gaffney, Lucey, Sarah@BCDC

Hi Marc,

Thank you for your patience. Below is the information you requested, and attached is the pertinent Redwood City document. Brian and I have also provided additional information related to the roost site mitigation that may be helpful to your review.

The revision to Redwood City mitigation measure #10 in the Negative Declaration does not relieve Mr. Sanders of his obligation to recreate a roosting island based specifically on a roost site mitigation plan approved by USFWS and CDFW. This requirement to have agency approval for roost site mitigation is imposed not only in BCDC's permit and the Negative Declaration, but also in the MMRP which states for Mitigation #10 that the applicant was required to provide "Letter(s) of concurrence from applicable agencies – Prior to grading permit". The MMRP was not amended.

The answer to your question regarding why Redwood City purported to amend Mitigation Measure #10 to add the new language is found in a Redwood City Staff Report packet for the Planning Commission Meeting held on January 20, 2004. (See attached Staff Report CCCR obtained from Redwood City)

The ANALYSIS discussion at PDF p.10 (page circle 7) of the Staff Report states:

Roosting site: Mitigation Measure #10 required the applicant to provide a roosting site for the local bird population. At the time that this mitigation measure was drafted, it was assumed that the remaining portion of Cargill's pond 10 would also be redeveloped in the very near future, which would eliminate the existing roosting area. However, this situation has changed, and the conversion of pond 10 to another use is not anticipated. The existing condition of pond 10 provides the necessary roosting site. Attachment 8 includes a letter from the Cargill Salt Company acknowledging that Cargill is responsible for maintaining the roosting site. The existing condition fulfills mitigation measure #10. In the event that the remainder of pond 10 is redeveloped, Cargill will be responsible for addressing this issue at that time.

The language added at PDF p.53 (page circle 50) to Mitigation Measure #10 in 2004 by the Planning Commission states:

"Alternatively, since Cargill pond 10 is continuing to function as a roost site, it shall be the responsibility of any future developer involved in the conversion of pond 10 to another use to locate a new roost site".

With this language, the City is ensuring that Cargill, or its developer, will be obligated to recreate the three-acre roosting island (required by the resource agencies) at an alternative location should the remainder of Pond 10 be approved for development.

The statement in the City's Analysis discussion above that "The existing condition of pond 10 fulfills Mitigation Measure #10", is based on a letter from Robert Douglas, Manager of Real Property for Cargill Salt, to Mark Sanders and Jill Ekas, Senior Planner for Redwood City. (See Attachment 8, November 26, 2003 correspondence at PDF p.71, page circle 68, in the packet)

In this correspondence, Mr. Douglas states that Cargill "authorized Mr. Sanders and his technical

consultants to state that the location and timing of a permanent island would be determined when the future use of the Redwood City pond sites is determined, when and if we were to change our operations for the Redwood City Plant Site”.

Mr. Douglas goes on to state: “With the approval of the marina and the beginning of construction, and as recommended in the Redwood City Staff Report, Cargill, by management of pond levels, will create a similar habitat to the south, where it remains in Pond 10 as before. By minor modifications of our operations an equivalent area of habitat will remain to provide the same functions and benefits.”

There are a number of serious problems with respect to the City’s statement and the information in the November 26, 2003 correspondence from Cargill:

- 1) In response to our FOIAs and PRAs, CCCR located no documents from Redwood City, USFWS, or BCDC providing evidence that Mr. Sanders complied with the Negative Declaration, MMRP or BCDC Permit requirement to secure approval from the resource agencies for the roost site mitigation plan, including this proposal that Cargill would recreate a roost island through “management of pond levels.” In addition to this obvious violation, the assumption in this letter is that Cargill is somehow qualified to determine if the same “functions and benefits” have been provided.
- 2) In 2006, Cargill informed Redwood City that it was winding down its salt-making operation at the Redwood City Plant Site. There has been no evidence of salt harvesting, or of brines being introduced into ponds for a number of years, and there is no evidence that Cargill has been managing water levels in Pond 10 to create and maintain a roosting island.
- 3) CCCR provided BCDC with evidence that there was no roosting habitat at all in Pond 10, other than the levees, for migratory shorebirds in March of this year. This directly contradicts Redwood City’s assumption in 2004 that “Cargill pond 10 is continuing to function as a roost site.”

The BCDC Permit is clear that the permittee, Mark Sanders is responsible for recreating the roosting island. BCDC's permit, at p. 37, states that:

The project will also result in the loss of 2.3 acres of shorebird roosting habitat. To mitigate for this impact, approximately 3.0 acres of replacement roosting habitat with similar functions and benefits for the birds will be created pursuant to plans approved by the DF&G and FWS on the remaining portions of the former bittern pond lying south of the project site or an approved alternate location.

It is also clear from the City’s MMRP that Sanders was required to have letters of approval from the agencies for the location and design plans for the island prior to issuance of the grading permit for construction of the marina. This never occurred.

Gail

From: "Zeppetello, Marc@BCDC" <marc.zeptello@bcdca.gov>
To: Gail Raabe <glraabe@sbcglobal.net>
Cc: Brian Gaffney <brian@gaffneylegal.com>; "Lucey, Sarah@BCDC" <Sarah.Lucey@bcdca.gov>; "Zeppetello, Marc@BCDC" <marc.zeptello@bcdca.gov>
Sent: Wednesday, June 21, 2017 5:24 PM
Subject: Re: Redwood City MND and MMRP

Gail and Brian,

Comparing mitigation measure #10 in the original MMRP with the same measure in the addendum, a sentence was added in the addendum that appears to relieve Mr. Sanders of the obligation to provide roost site mitigation — alternatively, compliance with this provision becomes the obligation of any future developer involved in the conversion of pond 10 to another use. Do you have any info or documentation as to why this mitigation measure was revised in the addendum?

Thanks, Marc

Marc A. Zeppetello
Chief Counsel
San Francisco Bay Conservation
and Development Commission
455 Golden Gate Avenue, Suite 10600
San Francisco, CA 94102

Telephone: (415) 352-3655
marc.zeptello@bcdca.gov

From: Gail Raabe <glraabe@sbcglobal.net>
Reply-To: Gail Raabe <glraabe@sbcglobal.net>
Date: Monday, June 19, 2017 at 2:43 PM
To: Marc Zeppetello <Marc.Zeppetello@bcdca.gov>
Cc: Brian Gaffney <brian@gaffneylegal.com>
Subject: Redwood City MND and MMRP

Hi Marc,

Attached are the two documents you requested. We obtained both of these in response to our PRA to the City.

The MND includes the 2003 addendum. The MMRP ends with Mitigation Measure No. 35. We confirmed with the City Clerk that there are no additional pages for the MMRP.

Regards,
Gail